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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/314,324	05/19/1999	WILLIAM JOSEPH ARMSTRONG	R0999-023	5010

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SCOTT A STINEBRUNER  
WOOD HERRON & EVANS LLP  
2700 CAREW TOWER  
441 VINE STREET  
CINCINNATI, OH 452022917

EXAMINER

DIXON, THOMAS A

ART UNIT PAPER NUMBER

3629

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/314,324

Applicant(s)

ARMSTRONG ET AL.

Examiner

Thomas A. Dixon

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- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3-10 and 12-20 is/are pending in the application.
- 4a) Of the above claim(s) 2 and 11 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 9 is/are allowed.
- 6) ☒ Claim(s) 3-8,10 and 12-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The rejections of the previous office action are withdrawn.

#### ***Double Patenting***

2. Claims 10, 18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 11 of U.S. Patent No. 6,691,146. Although the conflicting claims are not identical, they are not patentably distinct from each other because though the language of the claims are not identical, they are drawn to an apparatus for tracking the use of software licenses across a logical partitions with an operating system a partition manager as currently claimed.
3. Claim 19 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 27 of U.S. Patent No. 6,691,146. Although the conflicting claims are not identical, they are not patentably distinct from each other because though the language of the claims are not identical, they are drawn to a program product for tracking the use of software licenses across a logical partitions with an operating system a partition manager as currently claimed.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3 recites the limitation "the method of claim 2" in line 1. There is insufficient antecedent basis for this limitation in the claim, because claim 2 has been cancelled.

#### ***Allowable Subject Matter***

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5. The following is an examiner's statement of reasons for allowance:

As per Claim 1.

The prior art of record, specifically Duvvoori (6,201,438) in view of Microsoft Press Computer Dictionary does not disclose each logical partition includes an operating system resident therein, and wherein the partition manager is configured to allocate hardware resources in the logically partitioned computer to each of the plurality of logical partitions.

The claims that depend from the above are allowable for the same reason.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Prior Art Made of Record***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Goss et al (6,704,766) teaches a logically partitioned machine with operating system in each partition, but does not disclose license management as claimed.

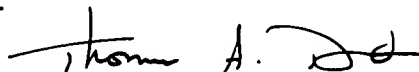
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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Dixon whose telephone number is (703) 305-4645. The examiner can normally be reached on Monday - Thursday 6:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703) 308-2702. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thomas A. Dixon  
Primary Examiner  
Art Unit 3629

April 28, 2004